

will be subject to the initial determination by the Secretary, Maritime Administration. If the Secretary makes a determination unfavorable to the submitter, the submitter will be advised that MARAD will not honor the request for confidentiality at the time of any request for production of information under the FOIA by third parties.

§ 383.3 Determination of fair and reasonable rates.

(a) *Cost components.* MARAD shall calculate fair and reasonable rates for all liner vessels participating in this program. The fair and reasonable rate shall include an operating cost component, a fuel cost component, a capital cost component, and a component for port and cargo handling expenses.

(b) *Operating cost component—(1) General.* MARAD shall calculate a daily operating cost for each vessel based on the actual operating costs of the owner's vessels of the same type. This cost shall be obtained from cost data for the calendar year immediately preceding the current year submitted in accordance with paragraph (b)(1) of this section. Such data shall be escalated by MARAD to the current year.

(2) *Items included.* The operating cost component shall include all costs relating to vessel operation (net of operating differential subsidy), with the exception of fuel costs and charter hire, and shall include the expense categories as defined by 46 CFR 232.1, Form MA-172, Schedule 301, Operating Expenses.

(c) *Fuel component.* Fuel costs shall be determined as a separate component for each vessel, based on the vessel's rate of consumption and current fuel prices.

(d) *Capital component—(1) General.* MARAD shall calculate the daily capital component of the fair and reasonable rate for each participating vessel, consisting of vessel depreciation, interest, return on working capital, and return on equity.

(2) *Items included.* The capital component shall include:

(i) *Depreciation.* The owner's capitalized vessel cost, including capitalized improvements, shall be depreciated on a straight-line basis over a 25-year eco-

nomic life, unless the owner has purchased or reconstructed the vessel when its age was greater than 15 years old. To the extent a vessel is chartered or leased, the operator shall submit the capitalization cost and imputed interest rate (in the event these items are not furnished, they shall be constructed by MARAD). When vessels more than 15 years old are purchased, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 15 years old shall be depreciated over a 10-year period. When vessels more than 15 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost, including capitalized improvements, and that annual principal payments are made in equal installments over the 25-year economic life. If an actual interest rate is not available, MARAD shall select an appropriate interest rate. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the guideline rate shall be used. A current long-term interest rate (the title XI rate if available) will be used for operators without vessel debt.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover 100 percent of the operating and voyage costs of the vessel for the voyage. The rate of return shall be based on an average of the most recent (over a five year period) return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(iv) *Return on equity.* The rate of return on equity shall be determined as in paragraph (d)(2)(iii) of this section. For the purpose of determining equity it shall be assumed that the vessel's constructed net book value less constructed principal outstanding in equity. The constructed net book value shall equal the owner's capitalized cost

minus accumulated straight-line depreciation. For vessels whose depreciable period has expired (excluding improvements) as determined in paragraph (d)(2)(i), the scrap value of the vessel shall be considered as the vessel's equity.

(v) *Voyage component.* The annual depreciation, interest, and return on equity shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital for the voyage to determine the capital cost component.

(e) *Port and cargo handling component—(1) General.* MARAD shall calculate an estimate of port and cargo handling costs consisting of a U.S. port and cargo handling element and a foreign element, as applicable. The port and cargo handling cost component shall be based on the most current information available verified by information submitted in accordance with this section, or as otherwise determined by MARAD. Since Government shipper agencies have at times required steamship lines to perform services beyond their usual scope of operation on some shipments, additional services such as bagging at discharge, rail or truck loading, on carriage to inland destinations, and other sundry expenses have been included in the ocean freight rate in the past. In order to provide a fair and reasonable guideline rate, these expenses will be identified separately from the guideline rate and should be reviewed and approved by the sponsoring Government shipper agency. In the event such charges are not approved, the cargo preference requirement must be met by utilizing a U.S.-flag vessel for the ocean transportation, if such a vessel will accept a rate at or below the guideline rate for the ocean transportation only.

(2) *Items included.* Port and cargo handling charges shall include the following, assuming full berth term quotations:

(i) *U.S. port and cargo handling charges.* In this category MARAD shall include domestic port and cargo handling charges for commodity, port of lading, and lot size based on the cargo tender.

(ii) *Foreign port and cargo handling charges.* To the extent possible, MARAD shall include in this category all known foreign port cargo handling and canal charges that would normally be included. These estimates shall be made for commodity, port of discharge, and lot size based on the cargo tender.

(3) *Terms.* If the terms of the tender are other than full berth terms to the vessel owner, adjustment to the guideline rate shall be made on an *ad hoc* basis by request to MARAD. This provision shall be interpreted in accordance with Incoterms, as amended, published by the International Chamber of Commerce, Paris, France.

(f) *Determination of voyage days and cargo carried.* For purposes of determining the vessel operating, fuel, and capital cost components of the fair and reasonable rate (and certain other costs, i.e., canal tolls), the voyage length and cargo tons shall be based on an average of voyage days total payable tons carried for all appropriate vessel types and voyages of the operator on the service for which the fair and reasonable rate is being calculated, as determined from data submitted in accordance with § 383.2(b)(1). Appropriate adjustments will be made to existing data in instances where an operator commences operation of a newly authorized service. The component for port and cargo handling charges shall be based on cargo tender terms.

(g) *Total rate.* The operating cost component, fuel cost component, capital cost component, and port and handling cost component, each expressed as a cost per ton, shall be added together. The sum of the four components, plus an additional 13.5 percent of the sum to account for brokers' commissions and general and administrative expenses, shall yield the guideline rate.

§ 383.4 Waiver.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.